

RESOLUTION NO. 4140

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLEDAD
AUTHORIZING THE CITY MANAGER TO EXECUTE A PROPOSITION 50 SUB-
GRANT DISBURSEMENT AGREEMENT BETWEEN THE MONTEREY COUNTY
WATER RESOURCES AGENCY AND THE CITY OF SOLEDAD**

WHEREAS, the State Water Resources Control Board (the "State Board") reviews grant applications and awards grant monies to select local public agencies under the provisions of the California Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002, Water Code section 79500 et seq., approved by the voters as Proposition 50; and

WHEREAS, the Monterey County Water Resources Agency ("Agency") submitted a joint application on behalf of itself, the Marina Coast Water District, and the City of Soledad to fund in part or in whole various water-related projects within the Monterey County region (collectively referred to herein as the "Salinas Valley Integrated Water Management Project" or "IWM Project"); and

WHEREAS, the State Board approved the joint application and awarded the Agency grant monies in an amount not to exceed Twelve Million Five Hundred Thousand Dollars (\$12,500,000.00), pursuant to the terms of a Proposition 50 Integrated Regional Water Management Implementation Grant Agreement between the State Board and the Agency ("Grant Agreement"); and

WHEREAS, pursuant to the terms of the Grant Agreement, the Agency must provide invoices, budget details and reports and otherwise ensure compliance with the grant requirements of the Integrated Regional Water Management Grant Program, funded by Proposition 50, of both Agency projects and all sub-grantee projects, including the Soledad Wastewater Reclamation Facilities Project ("Project"); and

WHEREAS, the Agency wishes to disburse state monies owed to the City (henceforth referred to herein as "sub-grant monies" or "sub-grant funds") and the City wishes to assist the Agency in complying with all grant requirements with respect to those aspects of the IWM Project that involve the Project and are reflected in the sub-grant disbursement agreement known as "Proposition 50 Integrated Regional Water Management (IRWM) Implementation Grant Agreement between the State Water Resources Control Board, hereinafter called "State" or "State Water Board" and Monterey County Water Resources Agency, hereinafter called "Grantee" Salinas Valley Integrated Water Management, hereinafter called "Project Agreement No. 07-506-550-0"; and

WHEREAS, the City will receive \$4,498,000 of the \$12,500,000 awarded to the Agency as part of the overall regional project; and

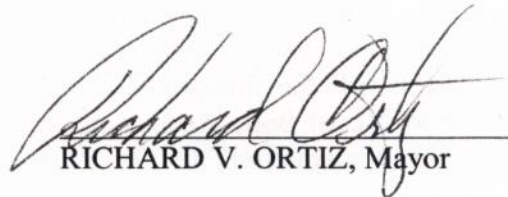
WHEREAS, more specifically, in its commitment to and support of the Agency, the City commits and consents to undertaking all reporting, invoicing and other actions that the City would have been obligated to perform had it been designated the lead grantee by the State Board with respect to that Part of the IWM Project involving the Soledad Project and passing on such documents, data and other materials to the Agency in the form and content as required by the Agency.

NOW THEREFORE, BE IT HEREBY RESOLVED by the City Council of the City of Soledad that the Council approves the "Sub-grant Disbursement Agreement" and authorizes the City Manager to execute said Agreement, in the form attached hereto as Exhibit A and by this reference incorporated herein, on behalf of the City with the Monterey County Water Resources Agency.

PASSED AND ADOPTED by the City Council of the City of Soledad at a regular meeting duly held on the 19th day of December 2007 by the following vote:

AYES, and in favor thereof, Councilmembers: Martha Camacho, Juan Saavedra, Patricia Stephens, Mayor Pro Tem Christopher Bourke

NOES, Councilmembers:	None
ABSTAIN, Councilmembers:	None
ABSENT, Councilmembers:	Mayor Richard Ortiz


RICHARD V. ORTIZ, Mayor

ATTEST:


NOELIA F. CHAPA, City Clerk

EXHIBIT A

Proposition 50 Sub-grant Disbursement Agreement Between the Monterey County Water Resources Agency and the City of Soledad

This Proposition 50 Sub-grant Disbursement Agreement ("Sub-grant Disbursement Agreement") is entered into as of _____ 2007 (the "Agreement Date"), between the Monterey County Water Resources Agency (the "Agency"), a local public entity, and the City of Soledad (the "City"), a local public entity, to fund a portion of the cost of the acquisition, installation and construction of certain facilities and improvements, known as the City of Soledad Water Recycling & Reclamation Project (the "Soledad Project"). The Soledad Project is located within the jurisdictional boundaries of the City of Soledad.

ARTICLE 1 CONSTRUCTION OF THE SOLEDAD PROJECT

Section 1.1 Construction.

A. Commencement of Construction. The City shall commence and diligently pursue the Soledad Project, as described in the Grant Agreement. Global positioning system information, California Environmental Quality Act/ National Environmental Protection Act documentation, and other information shall be completed by the estimated and critical due dates set forth in Exhibit A of the Grant Agreement.

B. Completion of Construction. The City hereby agrees to complete the construction and installation of all components of the Soledad Project by March 1, 2011, pursuant to the mandates of the Grant Agreement.

ARTICLE 2 SUB-GRANT DISBURSEMENT AND ACCOUNTING; USE OF SUB-GRANT FUNDS

Section 2.1 The Sub-grant. The Agency agrees to disburse sub-grant funds to the City in an amount not to exceed a total of **Four Million Four Hundred and Ninety Eight Thousand Dollars (\$4,498,000)** to fund those costs incurred by the City as a result of the acquisition, design, planning, installation and/or construction work of the Soledad Project and that conform to the conditions of the Grant Agreement and the Integrated Regional Water Management Grant Program.

Section 2.2 Conditions Precedent to All Sub-grant Disbursements. Disbursement of sub-grant funds is conditioned on the Agency's receipt of a written request for each disbursement of sub-grant funds. Both Parties acknowledge that the criteria and sufficiency of requests for reimbursement of Salinas Valley Integrated Water Management Project costs, including those associated with the Soledad Project, are determined solely by the State Board. Accordingly, each City request for sub-grant monies from the Agency shall provide all supporting evidence, documentation and materials, as required by the State Board pursuant to the Grant Agreement and the Integrated Regional Water Management Grant Program. Invoices shall be submitted in the format provided by the State Board. The Agency shall disburse all sub-grant funds that are approved for reimbursement by the State Board.

Section 2.3 Invoice Submission and Disbursement of Grant Funds. All City invoices and requests for payment that comply with State Board requirements, as set forth in the Grant Agreement and the Integrated Regional Water Management Grant Program, shall be submitted or passed through to the State Board by the Agency within thirty (30) days of the City's submission of such documents. Sub-grant funds for State Board-approved invoices shall be paid to the City **within fifteen (15) days** of the Agency's receipt of the funds.

Section 2.4 Use of Grant Funds. City agrees to expend Grant funds only for costs incurred in connection with the acquisition, design, planning, installation and/or construction work of the Soledad Project.

Section 2.5 General City Obligations. The City shall comply with all applicable laws, policies and regulations for the performance of the Soledad Project, as represented by the Agency in the Grant Agreement. The City also agrees to aid and help the Agency comply with all terms, provisions, conditions and commitments in the Grant Agreement, including all incorporated documents, and fulfill all assurances, declarations, representations and commitments made by the Agency in the Grant Agreement, insofar as they affect or involve the Soledad Project. Such aid shall include, but not be limited to:

- A. The City's submission of all documentation and accounting data necessary for the Agency to generate the quarterly reports for the State Board required by Exhibit B of the Grant Agreement.
- B. The City's submission of data, plans and documents necessary for the Agency to prepare a Project Assessment and Evaluation Plan, as that term and requirement is defined in Exhibit A of the Grant Agreement.

Section 2.6 County agrees that the Agency may withhold a percentage of those funds set out in paragraph 2.1 above as administration costs. This shall be a general percentage of the grant funds to sub-grantees for administration of the SVIWMP project contract. The actual auditable costs shall be accounted for based on cost incurrence associated with each grantee including the Agency.

ARTICLE 3 INDEMNITY REQUIREMENTS

The City shall defend, hold harmless and indemnify the Agency from and against all claims, liability, costs, expenses, loss or damages of any nature whatsoever, including reasonable attorney's fees, arising out of or in any way connected with its failure to perform its covenants and obligations under this Sub-grant Disbursement Agreement and any of its operations or activities related thereto, excluding the willful misconduct or the gross negligence of the Agency.

The Agency shall defend, hold harmless and indemnify the City from and against all claims, liability, costs, expenses, loss or damages of any nature whatsoever, including reasonable attorney's fees, arising out of or in any way connected with its failure to perform its covenants and obligations under this Sub-grant Disbursement Agreement and any of its operations or activities related thereto, excluding the willful misconduct or the gross negligence of the City. The City and Agency further agree that any claim, liability costs, expenses, loss or damages, attorney's fees, occasioned by Agency's action(s) or non-action(s) in complying with the requirements and obligations as imposed under the State Water Board Grant Agreement and Agency, are excepted from the above exclusion.

ARTICLE 4 MISCELLANEOUS

Section 4.1 Relationship of Parties. Nothing contained in this Sub-grant Disbursement Agreement shall be construed as creating the relationship of employer and employee or principal and agent between the Agency and the City or the City's agents or employees, and the City shall at all times be deemed a city and shall be wholly responsible for the manner in which it or its agents, contractors or suppliers perform after being paid by monies issued under this Sub-grant Disbursement Agreement.

Section 4.2 No Third Party Claims. Nothing contained in this Sub-grant Disbursement Agreement shall create or justify any claim against the Agency by any third person whom the City may have employed or contracted or may employ or contract relative to the purchase of any material, supplies, or equipment, or the furnishing or the performance of any work or service with respect to the EDS project undertaken by the City

District further agrees that it will require any employed or contracted, or future employed and contracted third party to agree to the above disclaimer and execute a written waiver to that effect.

Section 4.3 Notices. Any notice, request or consent required pursuant to this Agreement shall be deemed given when delivered personally or five (5) business days after being deposited in the U.S. mail, first class postage prepaid, return receipt requested, addressed as follows:

If to City: **City of Soledad**
Noelia F. Chapa, City Manager
248 Main St.
P. O. Box 156
Soledad, CA 93960

If to the Agency: **Monterey County Water Resources Agency**
Curtis Weeks, Project Director
893 Blanco Circle
Salinas, CA 93901

or to such other addresses as the Parties may designate by notice as set forth above.

Section 4.4 Successors and Assigns. All of the terms of this Sub-grant Disbursement Agreement shall apply to and be binding upon, and inure to the benefit of, the successors and permitted assigns of the Agency and City, respectively, and all persons claiming under or through them.

Section 4.5 Disputes: If any disputes under this Sub-grant Disbursement Agreement or Grant Agreement arises, the City and Agency shall first meet and confer, in an attempt to resolve the matter between themselves. Each party shall make reasonable efforts to provide to the other party all the information that is relevant to the dispute, so that the City and Agency will have ample information with which to reach a decision. The parties must submit any disputes, subsequent to meeting and conferring, to mediation before filing suit to enforce or interpret this Sub-grant Disbursement Agreement and Grant Agreement. Upon request by either party, the parties will within ten (10) days select a single mediator, or if the parties cannot agree, they shall ask the then presiding Judge of the Monterey County Superior Court to select a mediator to mediate the dispute within fifteen (15) days of such selection.

Section 4.6 Severability. If one or more provisions of this Sub-grant Disbursement Agreement are found invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, the remaining provisions shall not in any way be affected, prejudiced, disturbed or impaired thereby, and all other provisions of this Sub-grant Disbursement Agreement shall remain in full force and effect.

Section 4.7 Amendments/Entire Agreement. The Agency and the City reserve the right to amend this Sub-grant Disbursement Agreement by mutual consent. It is mutually understood and agreed that no amendment, modification, alteration or variation of the terms of this Sub-grant Disbursement Agreement shall be valid unless in writing and signed and acknowledged and approved by both parties. This Sub-grant Disbursement Agreement constitutes the entire agreement of the parties and no oral understandings or agreement not incorporated herein shall be binding on either party.

Section 4.8 Time. Time is of the essence in the performance of the terms and conditions of this Sub-grant Disbursement Agreement.

Section 4.9 Governing Law. The laws of the State of California shall govern this Sub-grant Disbursement Agreement.

Section 4.10 Headings. The headings within this Sub-grant Disbursement Agreement are for the purpose of reference only and shall not limit or otherwise affect any of the terms of this Sub-grant Disbursement Agreement.

Section 4.11 Counterparts, Facsimile Copies. This Sub-grant Disbursement Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

IN WITNESS WHEREOF, the Agency and the City have executed this Sub-grant Disbursement Agreement as of the date first above written.

Agency:

**Monterey County Water
Resources Agency**

By _____

Attest:

Agency Clerk

Reviewed as to Form:

Stephanie Stuart

Agency Counsel

CITY:

City of Soledad

By *Arletta A. Chaya*

City Manager

Attest:

Arletta A. Chaya

City Clerk

Reviewed as to Form:

City Attorney